

## MEMORANDUM OF UNDERSTANDING

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**United States Commodity Futures Trading  
Commission**



**Korean Financial Services Commission**



**Korean Financial Supervisory Service**

COOPERATION AND THE EXCHANGE OF INFORMATION  
RELATED TO THE SUPERVISION OF CROSS-BORDER CLEARING ORGANIZATIONS

September 25, 2015

**MEMORANDUM OF UNDERSTANDING CONCERNING COOPERATION  
AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION  
OF CROSS-BORDER CLEARING ORGANIZATIONS**

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the United States Commodity Futures Trading Commission and the Korean Financial Services Commission and Financial Supervisory Service (collectively, the "Authorities") have reached this Memorandum of Understanding ("MOU") regarding cooperation and the exchange of information in the supervision and oversight of clearing organizations that operate on a cross-border basis in both the United States and the Republic of Korea ("Korea"). The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates.

**ARTICLE ONE: DEFINITIONS**

For purposes of this MOU:

1. "Authority" means:
  - a. In the United States, the Commodity Futures Trading Commission ("CFTC"); and
  - b. In Korea, the Financial Services Commission ("FSC") and the Financial Supervisory Service ("FSS") (individually, a "Korean Authority", and together referred to as the "Korean Authorities").
2. "Requesting Authority" means the Authority making a request under this MOU.
3. "Requested Authority" means:
  - a. The Korean Authority to which a request is made under this MOU, where the Requesting Authority is the CFTC; or
  - b. The CFTC, where the Requesting Authority is a Korean Authority.
4. "Laws and Regulations" means:
  - a. For the CFTC, the Commodity Exchange Act ("CEA"), Dodd-Frank Wall Street Reform and Consumer Protection Act, CFTC regulations, and other relevant requirements in the United States; and
  - b. For the Korean Authorities, the Financial Investment Business and Capital Markets Act, the Enforcement Decree of the Financial Investment Business and Capital Markets Act, the Regulations on Financial Investment Business, the Business Guideline for Financial Market Infrastructures, and other relevant laws, regulations or requirements in Korea.
5. "Person" means a natural person, unincorporated association, partnership, trust, investment company, or corporation, and may be a Clearing Member, Clearing Participant, or Covered Clearing Organization.

6. "Covered Clearing Organization" means a central counterparty organized in either the United States or Korea that satisfies both of the following criteria:
  - a. A derivatives clearing organization ("DCO") that is, or that has applied to be, registered as such or that has been granted, or that has applied for, an exemption from registration under the CEA; and
  - b. A clearinghouse that is, or that has applied to be, authorized by the FSC and that serves or will serve as a central counterparty or a clearinghouse that has received, or that has applied for, approval by the FSC and that serves or will serve as a central counterparty.
7. "Clearing Member" means a member of a Covered Clearing Organization that also serves as an intermediary through which market participants access the Covered Clearing Organization's services.
8. "Clearing Participant" means a participant of a Covered Clearing Organization that does not serve as an intermediary, but trades and clears only for its own account as principal.
9. "Books and Records" means documents, electronic media, and books and records within the possession, custody, and control of, and other information about, a Covered Clearing Organization related to its clearing activities.
10. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered Clearing Organization.
11. "On-Site Visit" means any regulatory visit as described in Article Five to the premises of a Covered Clearing Organization for the purposes of ongoing supervision and oversight, including the inspection of Books and Records.
12. "Local Authority" means the Authority in whose jurisdiction a Covered Clearing Organization that is the subject of an On-Site Visit is physically located.
13. "Visiting Authority" means the Authority conducting an On-Site Visit.
14. "Governmental Entity" means:
  - a. If the Requesting Authority is the CFTC, the U.S. Department of the Treasury or the U.S. Board of Governors of the Federal Reserve System; and
  - b. If the Requesting Authority is the FSC or the FSS, the Ministry of Strategy and Finance or the Bank of Korea.

## **ARTICLE TWO: GENERAL PROVISIONS**

15. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with the supervision and oversight of Covered Clearing Organizations. The cooperation and information sharing arrangements under this MOU should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and other

legal or regulatory requirements applicable to each Authority. With respect to cooperation pursuant to this MOU, no domestic secrecy or blocking laws or regulations should prevent an Authority from providing assistance to the other Authority. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation, including through mutual assistance in obtaining information related to Covered Clearing Organizations. The provisions of this MOU are intended to support both informal consultations and formal cooperation, as well as to facilitate the written exchange of non-public information in accordance with applicable laws.

16. This MOU does not create any legally binding obligations, confer any rights, or modify or supersede domestic laws. This MOU does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MOU.
17. This MOU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions or preclude Authorities from sharing information or documents with respect to Persons that are not Covered Clearing Organizations, Clearing Members, or Clearing Participants but may be subject to regulatory requirements in the United States and in Korea. In particular, this MOU does not affect any right of any Authority to communicate with, conduct an On-Site Visit of, or obtain information or documents from any Person subject to its jurisdiction that is physically located in the territory of another Authority.
18. This MOU is intended to complement but does not alter the terms and conditions of existing arrangements:
  - a. *The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (revised May 2012) (“IOSCO MMOU”)* to which the CFTC, FSC, and FSS are signatories, which covers primarily information sharing in the context of enforcement matters.
19. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A, which may be amended from time to time by an Authority transmitting revised contact information in writing to the other Authorities.

### **ARTICLE THREE: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION, AND EXCHANGE OF INFORMATION**

#### **General**

20. The Authorities recognize the importance of close communication concerning their supervision of Covered Clearing Organizations and intend to consult regularly, as appropriate, regarding:

- a. General supervisory issues, including regulatory, oversight, or other related developments;
  - b. Issues relevant to the operations, activities, and regulation of Covered Clearing Organizations; and
  - c. Any other areas of mutual supervisory interest.
21. The Authorities recognize in particular the importance of close cooperation in the event that a Covered Clearing Organization experiences, or is threatened by, a potential financial crisis or other Emergency Situation.
22. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
- a. The initial application for registration or authorization, or exemption therefrom, by a Covered Clearing Organization that is authorized or registered in the other jurisdiction;
  - b. The ongoing supervision and oversight of a Covered Clearing Organization including, for example, compliance with applicable statutory and regulatory requirements in either jurisdiction or with international standards; and
  - c. Regulatory or supervisory actions or approvals taken in relation to a Covered Clearing Organization that may impact the operations of the entity in the jurisdiction of the other Authority.

#### **Event-Triggered Notification**

23. As appropriate in the particular circumstances, the CFTC and each Korean Authority will endeavor to inform, respectively, the Korean Authorities or the CFTC promptly, and where practicable in advance, of:
- a. Pending regulatory changes that may have a significant impact on the operations, activities, or reputation of a Covered Clearing Organization, including those that may affect the rules or procedures of a Covered Clearing Organization;
  - b. Any material event of which the Authority is aware that could adversely impact the financial or operational stability of a Covered Clearing Organization including such events as a default or potential default of a Clearing Member or Clearing Participant; market or settlement bank difficulties that might adversely impact the Covered Clearing Organization; failure by a Covered Clearing Organization to satisfy any of its requirements for continued registration, authorization, or exemption where that failure could have a material adverse effect in the other jurisdiction; or any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Covered Clearing Organization;
  - c. The status of efforts to address any material event that could adversely impact the financial or operational condition of a Covered Clearing Organization, Clearing Member, or Clearing Participant; and

d. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of relevant authorization or registration, or exemption therefrom, concerning a Covered Clearing Organization.

24. The determination of what constitutes “significant impact”, “material event”, “adversely impact”, “difficulties”, “material adverse effect”, “adverse material change”, or “significant regulatory actions” for purposes of Paragraph 23 shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.

25. Paragraphs 23 and 24 shall not preclude the Authorities from entering into any further arrangements relating to notification regarding specific financial or operational issues related to a Covered Clearing Organization.

### **Request-Based Information Sharing**

26. To the extent appropriate to supplement informal consultations, upon written request, the Requested Authority intends to provide the Requesting Authority the fullest possible cooperation subject to the terms in this MOU in assisting the Requesting Authority’s exercise of its functions relating to a Covered Clearing Organization, including assistance in obtaining and interpreting information that is relevant to ensuring compliance with the Laws and Regulations of the Requesting Authority and that is not otherwise available to the Requesting Authority. Such requests shall be made pursuant to Article Four of this MOU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens.

27. The information covered by Paragraph 26 includes:

- a. Information relevant to the financial and operational condition of a Covered Clearing Organization’s clearing activities including, for example, financial resources, risk management, and internal control procedures;
- b. Relevant regulatory information and filings that a Covered Clearing Organization is required to submit to an Authority in relation to its clearing activities including, for example, interim and annual financial statements and event-specific notices; and
- c. Regulatory reports prepared by an Authority including, for example, examination reports, findings, or information contained in such reports regarding a Covered Clearing Organization’s clearing activities.

### **Periodic Meetings**

28. Representatives of the Authorities intend to meet periodically, as appropriate, to update each other on their respective functions and regulatory oversight programs and to discuss issues of common interest relating to the supervision of Covered Clearing Organizations, including: contingency planning and crisis management, systemic risk concerns, default procedures, the adequacy of existing cooperative arrangements, and the possible

improvement of cooperation and coordination between the Authorities. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

#### **ARTICLE FOUR: EXECUTION OF REQUESTS FOR INFORMATION**

29. To the extent possible, a request for information pursuant to Article Three should be made in writing (which may be transmitted electronically), and addressed to the relevant contact person in Appendix A. A request generally should specify the following:
- a. The information sought by the Requesting Authority;
  - b. A general description of the matter that is the subject of the request;
  - c. The purpose for which the information is sought; and
  - d. The desired time period for reply and, where appropriate, the urgency thereof.

Information responsive to the request, as well as any subsequent communication among Authorities, may be transmitted electronically. Any electronic transmission should use means that are appropriately secure in light of the confidentiality of the information being transmitted.

30. In an Emergency Situation, the CFTC and the relevant Korean Authority or Authorities will endeavor to notify the other(s) as soon as possible of the Emergency Situation and communicate information as appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During an Emergency Situation, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

#### **ARTICLE FIVE: ON-SITE VISITS**

31. In fulfilling its supervision and oversight responsibilities pursuant to, and to ensure compliance with, its Laws and Regulations, an Authority may need to conduct On-Site Visits to a Covered Clearing Organization physically located in the jurisdiction of another Authority. Each Authority will consult and work collaboratively with the other Authority in conducting an On-Site Visit.
32. An On-Site Visit by an Authority will be conducted in accordance with the following procedure:
- a. The Visiting Authority intends to provide advance notice to the Local Authority of its intent to conduct an On-Site Visit and the intended timeframe for, and the purpose and scope of, the On-Site Visit. Other than in exceptional circumstances, the Visiting Authority will notify the Local Authority prior to notifying the Covered Clearing Organization.

- b. The Local Authority will endeavor to share any relevant reports, or information contained therein, related to examinations it may have undertaken of the Covered Clearing Organization.
- c. The Authorities intend to assist each other regarding On-Site Visits, including providing information that the Visiting Authority may request and that is available prior to the On-Site Visit; cooperating and consulting in reviewing, interpreting, and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management of a Covered Clearing Organization.
- d. The Authorities will consult with each other, and the Local Authority may in its discretion accompany or assist the Visiting Authority during the On-Site Visit, or the Authorities may conduct joint On-Site Visits where appropriate.
- e. The Authorities will communicate with each other, including meetings as appropriate during the On-Site Visit. After concluding an On-Site Visit, the Visiting Authority will communicate any major issues to the Local Authority that may impact negatively the authorization, approval, registration, or exemption of the Covered Clearing Organization.

#### **ARTICLE SIX: PERMISSIBLE USES OF INFORMATION**

- 33. The Requesting Authority may use non-public information obtained under this MOU solely for the supervision and oversight of Covered Clearing Organizations pursuant to, and to ensure compliance with, the Laws and Regulations of the Requesting Authority.
- 34. The Authorities recognize that, while this MOU is not intended to enable the Authorities to gather information for enforcement purposes, the Authorities subsequently may want to use the non-public information provided pursuant to this MOU for enforcement purposes. With respect to information shared between the CFTC and one or both Korean Authorities, use of non-public information for enforcement purposes will be in accordance with the terms and conditions in Paragraph 10 of the IOSCO MMOU.
- 35. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraphs 33 or 34, the Requesting Authority must first consult with and obtain the written consent of the Requested Authority for the intended use. If consent is denied by the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
- 36. If an Authority ("Receiving Authority") receives, via a party that is not a signatory to this MOU, non-public information originally provided by the other Authority ("Disclosing Authority") that is related to the Disclosing Authority's supervision and oversight of a Covered Clearing Organization and that the Receiving Authority is aware was obtained by the third party from the Disclosing Authority on a confidential basis, the Receiving Authority will use and treat the information in accordance with the terms of this MOU.



37. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a Covered Clearing Organization, whether during an On-Site Visit or otherwise. However, where non-public information is provided to the Requesting Authority pursuant to an information-sharing request pursuant to Article Four of this MOU, the restrictions in this MOU apply to the use of the information by that Requesting Authority.

#### **ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING**

38. Except as provided in Paragraphs 39, 40, or 41, each Authority will keep confidential, to the extent permitted by law, non-public information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
39. Each Korean Authority may share non-public information obtained from the CFTC under this MOU with the other Korean Authority so long as that other Korean Authority uses and treats the information in accordance with the terms of this MOU.
40. As required by law, it may become necessary for a Requesting Authority to share non-public information obtained under this MOU with a Governmental Entity in its jurisdiction. In these circumstances and to the extent permitted by law:
- a. The Requesting Authority intends to notify the Requested Authority; and
  - b. Prior to the Requesting Authority sharing the non-public information, the Requesting Authority will provide adequate assurances to the Requested Authority concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that:
    - i. The Governmental Entity has confirmed that it requires the information for a purpose within the scope of its jurisdiction; and
    - ii. The information will not be shared by the Governmental Entity with other parties without getting the prior written consent of the Requested Authority.
41. Except as provided in Paragraphs 39 and 40, the Requesting Authority must obtain the prior written consent of the Requested Authority before disclosing non-public information received under this MOU to any non-signatory to this MOU. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is denied by the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.

42. To the extent possible, the Requesting Authority intends to notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. When complying with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
43. The Authorities intend that the sharing or disclosure of non-public information, including deliberative and consultative materials, such as written analysis, opinions, or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

#### **ARTICLE EIGHT: AMENDMENTS**

44. The Authorities will periodically as appropriate review the functioning and effectiveness of this MOU with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary. This MOU may be amended with the written consent of the Authorities referred to in Paragraph 1.

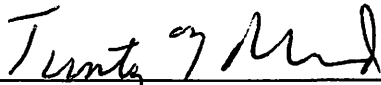
#### **ARTICLE NINE: EXECUTION OF MOU**

45. Cooperation in accordance with this MOU will become effective on the date this MOU is signed by the Authorities.

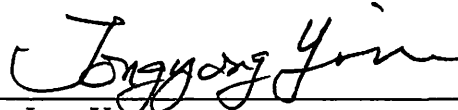
#### **ARTICLE TEN: TERMINATION**

46. Cooperation in accordance with this MOU will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the MOU. If one Korean Authority terminates this MOU, the MOU shall remain effective between the CFTC and the remaining Korean Authority. If an Authority gives notice of termination, the relevant parties will consult concerning the disposition of any pending requests. If an agreement cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under the MOU before the expiration of the 30-day period until all such requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner described under Articles Six and Seven.

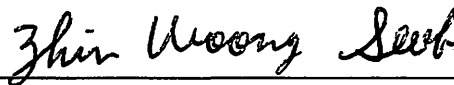
This MOU is executed in triplicate, this 25<sup>th</sup> day of September 2015.



Timothy G. Massad  
Chairman  
U.S. Commodity Futures Trading Commission



Yim, Jong-Yong  
Chairman  
Korean Financial Services Commission



Zhin, Woong-Seob  
Governor  
Korean Financial Supervisory Service

## APPENDIX A

### CONTACT PERSONS

*In addition to the following contact information, the CFTC and the FSC and FSS will exchange confidential emergency contact telephone information.*

#### CFTC

Jeffrey M. Bandman  
Acting Director, Division of Clearing and Risk  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581  
Phone: 1-202-418-5449  
Fax: 1-202-418-5547  
Email: jbandman@cftc.gov

#### Alternate Contacts:

Eileen A. Donovan  
Deputy Director, Clearing Policy, Division of Clearing and Risk  
Commodity Futures Trading Commission  
1155 21st Street, N.W.  
Washington, DC 20581  
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Julie A. Mohr  
Deputy Director, Examinations  
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Commodity Futures Trading Commission  
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